



August 26, 2002

Mr. James E. Fowler
Vice Chancellor of Human Resources
San Jacinto College District
4624 Fairmont Parkway, Suite 106
Pasadena, Texas 77504-3398

OR2002-4731

Dear Mr. Fowler:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167781.

The San Jacinto College District (the "district") received two requests for information relating to a letter written by a faculty member of the district. The district takes no position with respect to whether this information is excepted from disclosure. The district states, however, that the faculty member who wrote the letter has been informed of the requests and has asked the district not to release the requested information. The faculty member, Dr. Michael Woodson, has submitted written comments to this office, objecting to the release of the requested information. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released). The district has submitted the information in question for our review. We have considered Dr. Woodson's arguments and have reviewed the submitted information.

We first note that one of the requestors also seeks access to a related report. We assume that the district has released that information, to the extent that it exists. If not, then the district must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). Chapter 552 of the Government Code does not require the district to release information that did not exist when it received these requests or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We also note that Dr. Woodson enclosed with his comments documents that he claims should be withheld from disclosure. However, his enclosures do not correspond to the documents that the district submitted in requesting this decision. Our decision addresses

only the information that the district submitted to this office. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit specific information requested or representative samples if requested information is voluminous).

Next, we address Dr. Woodson's written comments with respect to the submitted information. His comments indicate that Dr. Woodson anticipated that the information at issue would be kept confidential. However, information may not be withheld from the public under chapter 552 of the Government Code simply because the person that provided the information to the governmental body anticipated or requested confidentiality in doing so. *See Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 676-78 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Dr. Woodson also contends that the submitted information "should remain confidential because most of the content has already been released in a separate but contingent [sic] investigation[.]" We note, however, that a governmental body must release the specific information to which a requestor seeks access, unless all or part of the information is shown to be excepted from public disclosure. *See* Open Records Decision Nos. 633 at 4 (1995) (city could not release major incident form as substitute for requested police narrative reports, unless requestor specifically agreed to substitution), 606 at 3 (1992) (governmental body must release copy of actual requested record, with any confidential or otherwise nondisclosable information excised).

Dr. Woodson also asserts a right to privacy with regard to the information at issue. Section 552.102 of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102(a) is generally applicable to information relating to a public official or employee. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The test of privacy under section 552.102(a) is the same as the test under section 552.101 of the Government Code in conjunction with *Industrial Foundation v. Texas Industrial Accident Board*. Common-law privacy under *Industrial Foundation* protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See* 540 S.W.2d at 685. Because of the greater legitimate public interest in information that relates to public officials and employees, privacy under section 552.102(a) is confined to information that reveals "intimate details of a highly personal nature." *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Thus, privacy under section 552.102(a) is "very narrow." *See* Open Records Decision No. 400 at 5 (1983).

Dr. Woodson argues that the submitted documents contain private information. He also contends that the release of this information would compromise his working environment and effectiveness as an instructor. However, upon review of this information, we find that

it relates entirely to the workplace conduct and performance of public employees and thus is a matter of legitimate public interest. Therefore, none of the submitted information is excepted from disclosure under section 552.102 of the Government Code. *See also* Open Records Decision Nos. 470 at 4 (1987) (employee's job performance does not generally constitute that person's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 423 at 2 (1984) (statutory predecessor applicable when information would reveal intimate details of highly personal nature), 405 at 2 (1983) (manner in which employee performed his job cannot be said to be of minimal public interest), 400 at 5 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy).

We note, however, that the submitted information contains a private e-mail address. Section 552.137, which the Seventy-seventh Legislature added to chapter 552 of the Government Code, provides as follows:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. The e-mail address that we have marked must be withheld under section 552.137, unless the individual to whom this e-mail address belongs has affirmatively consented to its public disclosure.

In summary, the district must withhold the marked e-mail address under section 552.137 of the Government Code, unless the individual to whom it belongs has affirmatively consented to its disclosure. With that exception, the district must release the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

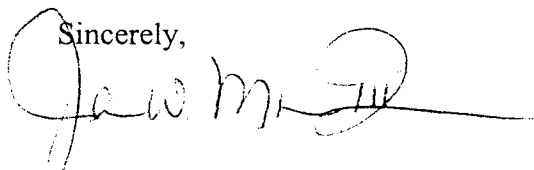
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "J W Morris III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 168361

Enc: Submitted documents

c: Mr. John Richard Bond
6223 Sea Isle
Galveston, Texas 77554
(w/o enclosures)

Mr. Eddie Weller
c/o James E. Fowler
San Jacinto College District
4624 Fairmont Parkway, Suite 106
Pasadena, Texas 77504-3398
(w/o enclosures)

Dr. Michael Woodson
English Department
San Jacinto College South
13735 Beamer Road
Houston, Texas 77089-6099
(w/o enclosures)